UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,387	01/16/2002	Nicolai Kosche	004-7051	6183

22120   7590   08/22/2005

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EXAMINER
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ART UNIT	PAPER NUMBER
2192	

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	**Applicant(s)**
Advisory Action *Before the Filing of an Appeal Brief*	*10/050,387*	KOSCHE ET AL.
	Examiner	**Art Unit**	
	Ted T. Vo	2192	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>01 August 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, ~~the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.~~

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-53 and 61-69*.

   Claim(s) withdrawn from consideration: <u>*54-60*</u>.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

/TED T. VO/
Primary Examiner

U.S. Patent and Trademark Office

PTOL-303 (Rev. 4-05)   **Advisory Action Before the Filing of an Appeal Brief**   Part of Paper No. 20050818

Continuation of 11. does NOT place the application in condition for allowance because:
    The filing after final on 8/01/05 has been considered but not deemed to be allowable because the withdrawn Claims still remain in the Claims' listing.
It should be noted that, on per applicants' reply, dated 2/22/05, applicants contented Examiner's citations are "flaw prevalent". Examiner addressed that applicants provided no proper response and thus the action made final.
    It should be noted that when a code is prepared for execution, the execution is a process of code identifying.
As addressed in the prior actions, the prior art of Armstrong revealed that Sun's hot spot dynamic compiler that is provided to identify hot spot code and provided to prepare the second code for the hot spot code. The Sun's Hot-spot compiler reads the broad limitation of the Claims.
 For example: Examiner' rationale to Claim 1:
A code preparation method comprising:
identifying at least one operation in first executable instance of code (Page 4, second paragraph, "When bytecodes are first loaded,..": referring "When a method is found");
executing the first executable instance and responsive to detection of an execution event (page 4, Second paragraph, referring "runtime"), associating a corresponding execution characteristic (page 4, Second paragraph, referring "profiler") with a corresponding identified one of the operations (page 4, Second paragraph, referring "method"/"HotSpot"); and
preparing a second executable instance of the code based, at least in part, on the association between the execution characteristic and the identified operation (page 4, second paragraph, referring "Every future call to that method uses the native machine instructions produced by the compiler": preparing a second executable instance), See pages 3 and 4, description of how the dynamic compiler works.

    With respect to Applicants' argument of Claims 1, 34, 61, and 66, in the remarks filed on 8/01/05, Applicants alleged Examiner gives an incomplete examination of the claim and ignores some of the limitations.
Examiner would respectfully request Applicants pointing these limitations and also respectfully request Applicants pointing Why Sun's hot-spot compiler does not disclose such limitations.
    It should be noted that a plain language would be interpreatable. The Claim limitation, such as "preparing a second executable instance of the code" is plain and broad and thus read by Armstrong's, "Every future call to that method uses the native machine instructions produced by the compiler". The existing of native machine instructions used for future execution in the place of hot-spot code is "preparing", and these native machine instructions are second executable instance of the code.
Other dependnent Claims recited the common and known things in the art, particularly the limitations are used by any compilers, thus the hot-spot dynamic compiler of Sun would not be exceptional.

TED T. VO
primary Examiner
8/18/05